

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

ENRIQUE FACUNDO,	)	CASE NO. 4:09 CV 1623
	)	
Plaintiff,	)	JUDGE JOHN R. ADAMS
	)	
v.	)	<u>MEMORANDUM OF OPINION</u>
	)	<u>AND ORDER</u>
J. MORELY, et al.,	)	
	)	
Defendants.	)	

On July 15, 2009, plaintiff pro se Enrique Facundo, an inmate at the Federal Correctional Institution at Elkton, filed this RICO action against 34 defendants. No filing fee has been tendered to file this action. For the reasons stated below, this action is dismissed without prejudice.

A prisoner is prohibited from bringing a civil action or appealing a judgment in a civil action in forma pauperis if, on three or more prior occasions, he brought an action or appeal in a court of the United States that was dismissed on the grounds that it was frivolous, malicious or failed to state a claim upon which relief may be granted. 28 U.S.C. § 1915(g).

Facundo has on at least five occasions filed a civil action failing to state a claim in this court. See, Facundo v. US Parole Commissioners, 4:08 CV 1563; Facundo v. Sniwzek, No. 4:05 CV 1333; Facundo v. Morrison, No. 4:03 CV 213. Thus, as the complaint in the instant action does not contain allegations reasonably suggesting he is in imminent danger of serious physical injury, he may not proceed without prepayment of the filing fee. See Mitchell v. Tennessee, No. 03-5816, 2004 WL 193153 at \*1 (6th Cir. Jan. 30, 2004).

Accordingly, this action is dismissed without prejudice. The court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

DATE: September 24, 2009

/s/ John R. Adams  
JOHN R. ADAMS  
UNITED STATES DISTRICT JUDGE